IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.155 OF 1995

The State of Maharashtra]
At the instance of]
the Directorate of Industrial]
Safety and Health.]..Appellant

Vs.

Shri. Sachin A.Gupte]
Occupier of Poona Shims]
Pvt.Ltd. 73/10, Vadgaon Mawal,]
District Pune.]..Respondent
(Ori.Accused).

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Shri.A.S.Shitole A.P.P. for the Appellant
Ms.Sharmila Kaushik for Respondent

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPTEMBER 13,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant-State of Maharashtra has challenged the judgment and order dated 29th September, 1994 passed by the learned Chief Judicial Magistrate, Pune in Case No.35 of 1993. By the said judgment and order, the respondent-accused came to be acquitted for the offence under Section 92 of the Factories Act.

2. Briefly stated the prosecution case is as under:

. The complainant P.W.1 S.A.Tikhe, Assistant Director Industrial Safety and Health, Pune (Inspector of Factories) visited the factory of the accused situated at 73/10 Wadgaon Mawal, District Pune on 16th July, 1993. The said factory is registered under the Factories Act and it is styled as Pune Seams Pvt. Ltd. On 15th July, 1993, the office of the complainant received intimation that an accident took place on 14th July, 1993 at about 8.45 p.m. in the night. One Mr.Raju Santu Pawale (P.W.2) was injured while working on the power press. The injury certificate of the injured was also received with the said intimation regarding the accident. As according to the complainant, the accident was a serious accident, he visited the factory on 16th July, 1993. The complainant found injured worker was working there since about three and half years and on the day of incident, he set the flattening die to perform flattening operation of perforation plate of Kirloskar Cummins Ltd.,Oil Cooler. The worker Raju Pawale had earlier flattened about 50 components. At about 8.45 p.m. when he was keeping the perforation plate in the die of the said power press to flatten it from the other side, suddenly the ram (punch) of the said power

press came down and his four fingers of the right hand other than thumb, as well as some part of the palm of the right hand were caught between the die and punch of the said power press machine causing crushing injuries. During his visit to the factory on 16th July, 1993, the complainant observed that the dangerous zone around power press was not securely fenced by any safeguard of substantial construction to prevent access to the dangerous zone between the die and punch. Hence, the incident occurred causing injury to Raju Pawale. Thus, as per the complainant, there is a contravention of provision by the respondent-accused which is punishable under Section 92 of the Factories Act, 1948.

3. The plea of the respondent-accused came to be recorded which is at Exhibit-8. The respondent-accused pleaded not guilty. During the course of trial, two witnesses came to be examined i.e. complainant P.W.1 S.A.Tikhe and injured worker i.e. P.W.2 Raju Santu Pawale. On perusal of the evidence adduced by the prosecution, the learned Magistrate acquitted the respondent-accused of the offence under Section 92 of the Factories Act, 1948. Hence, this appeal.

4. I have heard Shri.A.S.Shitole, the learned A.P.P. for the appellant and Ms.Kaushik, the learned advocate for the respondent-accused. I have also perused the entire material on record as well as the judgment and order of the learned Magistrate. I am implicitly satisfied that the view of acquittal was not only a possible view but also a plausible one.

5. In the present case, to corroborate the complaint, the complainant Shri.S.A.Tikhe (P.W.1) has examined himself as well as the injured worker i.e. P.W.2 Shri.Raju Pawale. From the evidence adduced by the prosecution, it is clear that there was an accident which caused injury to the worker P.W.2 Raju Pawale while he was working on the press machine. On behalf of respondent-accused it is not denied that the said accident on the power press took place and that Raju Pawale was injured therein. However, the point which is required to be determined is whether the accident was caused due to failure of the accused to comply with the provision of Factories Act by not providing security measures for the safety of the worker.

6. The respondent-accused has not denied that injured Raju Pawale was working on power press

machine no.3 and he was pressing plates on the die at the relevant time. The complainant in his evidence brought on record the procedure of the working on the power press machine. The complainant has deposed that the worker Raju Pawale was given work of flattening of perforation plate. While the punch is at the upper level, the worker has to place the perforation plate on the die. After putting the plate on the die, the worker should take off his hand and then press the foot pedal to bring it down on the die. Once the punch comes down on the die, only after the operation of pressing of plate is complete, the punch automatically goes up. After the punch goes up, it gets locked. Complainant has further deposed that if the locking system of the punch is working properly, it will not come down on the die unless the foot pedal is pressed. The complainant has admitted that during the inspection of the punch machine, it was found to be in a proper working order and the function of the punch was not faulty. Shri.Tikhe has also admitted that except the injured person, no other person told him that punch came down suddenly.

7. From the evidence, it is clear that if the locking system was working properly, the punch comes down only after the foot pedal is pressed. The die

machine also had a lever i.e. hand guard. The function of the lever i.e. hand guard is that after the foot pedal is pressed and while punch is coming down, it shifts the hand away from the die. The complainant has admitted that in case the operator commits some error while putting the material on the die and pressing the foot pedal and taking his hand away, there is possibility of accident. It is also brought on record that before meeting with this accident, injured Raju Pawale had also prepared 50 components in that very machine. This position is also admitted by injured Raju Pawale. Raju Pawale has further admitted that while flattening 50 plates, the handguard had swept away his right hand. However, he has further stated that when the incident took place, the handguard could not entirely shift his hand away. From the evidence on record, it is clear that machine on which injured Raju Pawale was working, was in proper working condition. In the said machine there is safety arrangement for shifting the hands away as soon as the worker presses the foot pedal. For bringing the ram (punch) down, the operation of the foot pedal is required. There is nothing on record brought by the complainant or injured witness that there was not proper arrangement for shifting away of the hand when the punch was pressed or that ram or the punch

was defective in nature as a result of which, the hand of the injured could not be shifted away. From the evidence on record, it is clear that the incident has occurred on account of some error/mistake on part of the injured Raju Pawale while operating the press machine either by not pressing foot pedal in time or by not putting the plate in the proper time, due to which, his hand came below the die and the ram. Looking to the evidence on record, it cannot be said that the power press machine was defective and hence, it caused injuries to Raju Pawale.

8. On the other hand, respondent-accused has produced on record the photographs as well as the instructions given to the workers from time to time which were to be followed at the time of operating the power press machine. Looking to this evidence which has been brought on record, it cannot be said that there was any negligence on the part of the respondent-accused. It is also to be noted that in the complaint, it is nowhere alleged that there was no proper handguard. In such circumstances, it would not be proper to hold that the complainant has succeeded in proving the contravention of Section 21(1)(iv)(c) of the Factories Act, 1948.

9. It is the case of the complainant that the respondent-accused contravened the said provisions of the Factories Act by not fencing the dangerous part of power press by providing safeguard as required. However, the complainant has not adduced any evidence on record as to what type of fencing was required and if there would be fencing, the work of the power press would not be disturbed. It is also not brought on record by any of the prosecution witnesses that even if the press was fenced from all the sides, the operator can put plate on the die by means of his hand and he can operate the press properly. In his oral evidence, the complainant has failed to disclose that any such type of fencing is found in the other power press machines in other factories. The complainant was asked whether such fencing was provided to the pressing machines wherein the manufacturing work was carried out by other companies, he replied that he did not know if the other manufacturing companies having pressing machines like H.M.T., Burman, Godrej, Press Master etc. provided or did not provide any fencing around such machines. The complainant has admitted that he did not know whether it is a compulsory for the manufacturing company to provide fencing to such machine.

10. The evidence of the complainant and Raju Pawale, is not sufficient to hold that there was any requirement for fencing the distance between die and the ram and that the respondent-accused has committed any offence by not providing the said fencing. On behalf of respondent-accused, it is submitted that for the operation of the power press, the operator has to press the foot pedal and before this he has to put the plate on the die. Only when the foot pedal is pressed, would the ram move and come down on the die. It is clear that it is only the action of the worker pressing the foot pedal which would bring down the ram on the die. Proper safeguards have been provided in the form of handguard which sweeps away the hands from the die when the ram is coming down. From all these facts, it is clear that there was some mistake committed on the part of injured Raju Pawale while operating the machine. It is seen that there is no sufficient evidence on record that the respondent-accused has committed any contravention of the provisions as mentioned in the complaint.

11. One of the grounds on which the learned Magistrate acquitted the respondent-accused is the ground which has been discussed above. I see nothing wrong in the view taken by the learned

Magistrate. It is well settled that if the view of acquittal could have been reasonably arrived at, then the circumstance that the appellate Court could have taken a different view, would be no ground to interfere. In this connection, there are no dearth of authorities, however, to eschew prolixity, I am referring to only a few of them i.e. **A.I.R. 1971 S.C. 66 Kheda Mohton and others Vs. State of Bihar, A.I.R. 1987 S.C.1083 Totasingh Vs. State of Punjab and 1997 (1) Mh.L.J. 770 State of Maharashtra Vs. Balram @ Nam Amarsingh Talwar.** It has been observed in para 12 of the decision in 1997 (1) Mh.L.J. 770 that:-

> . 12. At the very outset, we would like to point out that we are seized of the matter in an appeal against acquittal. It is well settled that unless appreciation of evidence is clearly unreasonable or the impugned order of acquittal is vitiated by some illegality, this Court does not interfere in an appeal against acquittal. It is equally well settled that if the view of acquittal is a possible view then this Court does not interfere in spite of the fact that it may feel that had it been the trial Court, it may have taken a different view. We are fortified in our view by the decisions of the Apex Court reported in **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and AIR 1987 SC 1083 Tota Singh Vs.State of Punjab.** We also feel that in this connection, it would be pertinent to refer to the decision of the Apex Court

reported in **1995(2) SCC 486, State of Punjab Vs. Ajaib Singh,** where in para 7, Their Lorships of the Apex Court observed thus:-

. " We agree that this Court is not precluded or the Court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a Court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court exercising appellate jurisdiction was possible view or not. And if the Court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order".

12. Apart from the above position, one cannot loose sight of the fact that the impugned order of acquittal was passed on 29.9.1994 and almost ten years have elapsed since then. I am of the opinion that in a cases like the instant one on account of efflux of time also, it would not be proper to disturb the order of acquittal.

13. In my view, the view of acquittal was a reasonable and possible view. In the circumstances, the appeal is dismissed.

[V.K.TAHILRAMANI,J.]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.155 OF 1995

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.A.S.Shitole, A.P.P. for Appellant -State
Ms.Sharmila Kaushik for Respondent.

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPTEMBER 13, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. In my view, the view of acquittal was a reasonable and possible view. In the circumstances, the appeal is dismissed.

(V.K.TAHILRAMANI,J.)